

1 CHRISTINE Y. WONG (CA SBN 284026)
2 ChristineWong@mofo.com
3 TIMOTHY W. BLAKELY (CA SBN 242178)
4 TBlakely@mofo.com
5 MORRISON & FOERSTER LLP
6 425 Market Street
7 San Francisco, California 94105-2482
8 Telephone: 415.268.7000
9 Facsimile: 415.268.7522

10 Attorneys for Defendant
11 FUJIAN JINHUA INTEGRATED CIRCUIT CO., LTD.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Case No. 18-CR-465 MMC

Plaintiff,

**MOTION FOR BILL OF
PARTICULARS**

v.

Date: February 6, 2019
Time: 2:15 p.m.

FUJIAN JINHUA INTEGRATED CIRCUIT
CO., LTD., et al.,

Defendant.

TO THE COURT AND ATTORNEYS OF RECORD: PLEASE TAKE NOTICE THAT on Wednesday, February 6, 2019, at 2:15 p.m. or as soon thereafter as the matter may be heard at a time set by The Honorable Maxine M. Chesney in Courtroom 7 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, defendant Fujian Jinhua Integrated Circuit Co., Ltd. (“Jinhua”), will move this Court for an Order requiring the government to provide a bill of particulars under Federal Rule of Criminal Procedure 7(f) identifying Jinhua’s role in the alleged charges, including whether and how Jinhua intended its agreement with United Microelectronics Corporation (“UMC”) to have the purpose of misappropriating information regarding dynamic random-access memory (DRAM) technology, specifics regarding Jinhua’s alleged conduct, specifics regarding alleged trade

1 secrets, and whether and how Jinhua carried out any conduct in the United States in furtherance
 2 of the alleged conspiracies.

3 This motion is based on this Notice of Motion and Motion, the accompanying
 4 Memorandum of Points and Authorities, the attached Declaration of Christine Y. Wong (“Wong
 5 Decl.”), the pleadings and papers filed in this matter, and on other such arguments or evidence as
 6 the Court shall deem proper.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. Introduction**

9 Defendant Jinhua seeks a bill of particulars pursuant to Federal Rule of Criminal
 10 Procedure 7(f) so that it can understand the charges against it, avoid surprise at trial, and
 11 adequately prepare and present its defense. The government alleges a broad and conclusory
 12 scheme to commit economic espionage and theft of trade secrets by five co-defendants. The
 13 Indictment, however, fails to provide any information about: (a) how Jinhua intended its
 14 agreement with UMC (or anyone else) to have the purpose of misappropriating trade secrets from
 15 Micron, (b) how Jinhua knew that trade secrets had been misappropriated, (c) how Jinhua’s
 16 alleged actions in the United States were in furtherance of the alleged crimes, or (d) specific
 17 information about the alleged “Trade Secrets.” Absent such basic information, Jinhua cannot
 18 effectively prepare its defense and will be vulnerable to surprise at trial. The vague allegations
 19 will allow the government to shift its theory of the case up to and including trial. *See United*
 20 *States v. Ryland*, 806 F.2d 941, 942 (9th Cir.1986) (“A defendant is … entitled to … the theory of
 21 the government’s case.”). Thus, a bill of particulars is needed.

22 **II. The Indictment**

23 **A. The Indictment alleges no specific acts of wrongdoing committed by Jinhua**

24 Jinhua has been charged in Count One of the Indictment with conspiracy to commit
 25 economic espionage, in violation of 18 U.S.C. Section 1831(a)(5), in Count Two with conspiracy
 26 to commit theft of trade secrets, in violation of 18 U.S.C. Section 1832(a)(5), and in Count Seven
 27 with economic espionage (receiving and possessing stolen trade secrets), in violation of 18 U.S.C.
 28 Sections 1831(a)(3) and (2). (Indictment, ECF No. 1). Excluding general background

1 information about Jinhua as company, in all the 18 pages of the Indictment, the allegations
 2 specific to Jinhua can be counted on almost one hand.

3 Specifically, the Indictment alleges that:

- 4 • Wang and Ho stole information “from Micron and provided it to UMC and Jinhua
 5 under the direction of Chen and others.” (Indictment ¶ 12(a));
- 6 • In or around January 2016, Jinhua and its co-defendant UMC “negotiated and later
 7 entered into a technology cooperation agreement whereby, with funding from Jinhua,
 8 UMC would develop DRAM technology, transfer the technology to Jinhua, and Jinhua
 9 would mass produce DRAM.” (*Id.* ¶ 20);
- 10 • On or about October 23, 2016, Jinhua and co-defendants Stephen Chen and UMC,
 11 “after having obtained Micron trade secrets and being in continuous control over
 12 them,” attended a recruiting event in the Northern District of California (*Id.* ¶¶ 31, 46);
- 13 • On or about October 24, 2016, Jinhua and co-defendants Chen and UMC visited
 14 equipment-manufacturing companies in the Northern District of California (*Id.* ¶ 47);
- 15 • From in or around September 2016 through March 2017, Jinhua and UMC filed five
 16 patents and a patent application allegedly containing “information that was the same
 17 or very similar to technology described in Micron’s Trade Secrets 2 and 6” (*Id.* ¶ 32);
 18 and
- 19 • In or around February 2017, co-defendant Chen, in addition to his position at UMC,
 20 assumed the position of president of Jinhua (*Id.* ¶ 34).

21 The Indictment describes a number of specific acts of wrongdoing allegedly committed by
 22 the individual defendants who were employed by UMC. (*See, e.g., id.* ¶¶ 23-30.) The
 23 Indictment, however, alleges no specific acts of wrongdoing committed by Jinhua, much less any
 24 in the United States. Instead, the Government relies solely on conclusory statements of
 25 wrongdoing and recitations of statutory elements.

26

27

28

1 **B. The Indictment is insufficient as to the alleged Trade Secrets**

2 The eight alleged Trade Secrets identified in the Indictment are described in
 3 extraordinarily broad language. For example, “Trade Secret 1” is described as “[t]he Micron
 4 process to manufacture and produce DRAM contained in the totality of information stolen by
 5 Wang and Ho from Micron and provided to UMC and Jinhua[.]” (Indictment ¶ 12(a)). By the
 6 government’s own description, Trade Secret 1 includes “proprietary and non-proprietary
 7 components,” without specifying what falls into which category. (*Id.*).

8 Each of the remaining seven alleged trade secrets is associated with a specific document,
 9 but these documents are voluminous and may contain broad swaths of generic information. For
 10 example, alleged Trade Secret 2 is a “233-page PDF document … contain[ing] comprehensive
 11 and very detailed information.” (*Id.* ¶ 12(b)). Similarly, alleged Trade Secret 6 is a “302-page
 12 PDF document … contain[ing] trade secret information”; alleged Trade Secret 7 is a “360-page
 13 PDF … contain[ing] trade secret information”; and alleged Trade Secret 8 is a “260 page PDF[.]”
 14 (*Id.* ¶¶ 12(f), (g), (h)). Each of the alleged Trade Secrets 3, 4, and 5 is an “Excel Spreadsheet with
 15 multiple tabs” with no indication as to where the “specific details,” “critical details,” or “precise
 16 information” are located. (*Id.* ¶¶ 12(c), (d), (e)).

17 **III. A Bill of Particulars Is Necessary in This Case**

18 An indictment “must be a plain, concise, and definite written statement of the essential
 19 facts constituting the offense charged[.]” Fed. R. Crim. P. 7(c)(1). An indictment is only
 20 sufficient “if it … contains the elements of the offense charged and fairly informs a defendant of
 21 the charge against which he must defend[.]” *Hamling v. United States*, 418 U.S. 87, 117 (1974).

22 Federal Rule of Criminal Procedure 7(f) authorizes the Court to order a bill of particulars
 23 in order to “apprise the defendant of the specific charges being presented to minimize danger of
 24 surprise at trial, to aid in preparation and to protect against double jeopardy.” *United States v.*
 25 *Long*, 706 F.2d 1044, 1054 (9th Cir. 1983); *see also Cook v. United States*, 354 F.2d 529, 531
 26 (9th Cir. 1965), *United States v. Giese*, 597 F.2d 1170, 1180 (9th Cir. 1979) *cert. denied sub*
 27 *nom.*, *Giese v. United States*, 444 U.S. 979 (1979). A bill of particulars is necessary where an
 28 indictment is ambiguous such that a defendant needs clarification in order to prepare for a

1 defense.¹ *Id.* The Indictment here is insufficient, containing only broad and conclusory
 2 allegations about Jinhua, none of which can apprise Jinhua of the specific wrongdoing it is
 3 alleged to have committed or the specific charges against it.

4 At the heart of the government's allegations against Jinhua is the technology cooperation
 5 agreement between Jinhua and UMC. (Indictment ¶ 20.) But the government fails to state how
 6 Jinhua, by entering into an agreement pursuant to which UMC was the party responsible for
 7 developing DRAM technology, (*Id.*,) knew or should have known that UMC would be involved
 8 in the alleged theft of trade secrets, much less whether Jinhua agreed to the theft of trade secrets
 9 in the first place. Neither does the indictment state what specific misappropriated information
 10 Jinhua knowingly received and possessed. Moreover, there is no specific information about how
 11 any alleged conduct by Jinhua in the United States was in furtherance of the alleged wrongdoing,
 12 aside from the conclusory assertion that Jinhua “ha[d] obtained Micron trade secrets and [was] in
 13 continuous control over them” during a trip to the United States in October 2016. (*Id.* ¶ 46.)
 14 Without such critical facts being identified, Jinhua is forced to speculate as to its role in the
 15 alleged crimes, its alleged wrongful acts, and even the date on which the government believes
 16 Jinhua joined the alleged conspiracies. *See, e.g., Russell v. United States*, 369 U.S. 749, 764
 17 (1962) (“guilt depends so crucially upon … specific identification of fact, our cases have
 18 uniformly held that an indictment must do more than simply repeat the language of the criminal
 19 statute”).

20 The broadly-defined trade secrets also make the defendant's task of adequately preparing
 21 for trial impossible. “[A] prosecution under [the EEA] must establish a particular piece of
 22 information that a person has stolen or misappropriated.” 142 Cong. Rec. S12201-03, 1996 WL
 23 559474, at *S12213 (daily ed. Oct. 2, 1996) The prosecution in the present case failed to do so,
 24 and we ask the Court to exercise its discretion to require the government to adequately define

25
 26 ¹ In deciding whether a bill of particulars is necessary, courts consider not only the
 27 charges in the indictment but also “all other disclosures made by the government.” *Long*, 706
 28 F.2d at 1054. The government has produced an initial set of discovery materials. *See* Wong
 Decl., ¶ 3. Nonetheless, no amount of discovery can cure the fundamental ambiguities in the
 indictment described herein.

1 each alleged Trade Secret. *See United States v. Liew*, No. CR 11-00573-1 JSW, 2013 WL
 2 2605126, at *8 (N.D. Cal. June 11, 2013) (directing the prosecution to “provide a bill of
 3 particulars that sets forth its theory of what Defendants’ [sic] reasonably believed the trade secret
 4 to be, e.g., whether the United States will argue that Defendants reasonably believed the entire ...
 5 process ... was a trade secret or whether it will argue the Defendants reasonably believed a subset
 6 of the process was a trade secret.).

7 Specifically, Jinhua requests that the Court order the government to provide the following
 8 information:

- 9 1. The date(s) on which Jinhua joined the alleged conspiracy to commit economic
 10 espionage and the alleged conspiracy to commit theft of trade secrets;
- 11 2. The precise words or conduct by which Jinhua agreed to join the alleged
 12 conspiracies;
- 13 3. Specific information, including the nature, date, time, and place of any overt act,
 14 demonstrating that Jinhua intended its agreement with UMC or anyone else to
 15 have the purpose of misappropriating information regarding DRAM technology
 16 from Micron or anyone else;
- 17 4. Specific information, including the nature, date, time, and place of any overt act,
 18 demonstrating Jinhua’s implementation of the alleged criminal agreement;
- 19 5. Specific information, including the nature, date, time and place of any overt act,
 20 demonstrating that Jinhua knew or should have known that UMC had used
 21 information misappropriated from Micron to develop the DRAM technology;
- 22 6. The alleged misappropriated information that was received or possessed by Jinhua;
- 23 7. Specific information about how any conduct by Jinhua in the United States was in
 24 furtherance of the alleged conspiracies;
- 25 8. The specifications, process parameters, and portions of the documents referred in
 26 Indictment paragraph 12(b)-(h) that are alleged Trade Secrets;
- 27 9. Specific physical, electronic, legal, and policy measures that Micron took to keep
 28 alleged Trade Secrets secret;

1 10. The government's theory of what Jinhua knew or should have known were trade
2 secret(s), and whether Jinhua knew or should have known the entire DRAM design
3 and manufacturing process, including all alleged Trade Secrets 1 through 8, were
4 trade secrets or whether Jinhua only knew or should have known a subset of the
5 process was a trade secret; and
6 11. Specific identification of: (1) the "ways and means"; 2) "proprietary and non-
7 proprietary components"; and (3) the "compil[ation] and combin[ation] by Micron
8 [that] form substantial portions of the DRAM design and manufacturing process"
9 as described in Indictment paragraph 12(a).

10

11 **IV. Conclusion**

12 For the foregoing reasons, the Court should enter an Order pursuant to Federal Rule of
13 Criminal Procedure 7(f) requiring the government to provide sufficient information about specific
14 conduct by Jinhua in furtherance of the alleged conspiracies and the substantive charge of
15 economic espionage.

16

17 Dated: January 23, 2019

CHRISTINE Y. WONG
TIMOTHY W. BLAKELY
MORRISON & FOERSTER LLP

18

19

20

By: /s/ Christine Y. Wong
CHRISTINE Y. WONG

21

22

Attorneys for Defendant
FUJIAN JINHUA INTEGRATED
CIRCUIT CO., LTD.

23

24

25

26

27

28